



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 488 OF 2016

SAMUEL M. ORIETO.....CLAIMANT

v

DR. D.K. NGOTHO t/a

NAKURU ELITE SCHOOL.....RESPONDENT

JUDGMENT

1. Samuel M. Orieto (Claimant) instituted legal proceedings against Dr. D. K. Ngotho t/a Nakuru Elite School (Respondent) on 6 December 2016 alleging that he was dismissed unlawfully. He also alleged that he had been underpaid and did not take leave and was not paid leave travelling allowance.
2. In a Response filed on 8 March 2017, the Respondent denied all the claims presented by the Claimant and also raised a plea of limitation.
3. On 9 May 2017, the Claimant filed a *Notice to Act in Person* and the Cause was heard on 19 October 2017 when the Claimant testified and on 24 October 2017 when the Respondent testified.
4. Although the Claimant proposed some 10 questions as arising for determination, the same can be condensed into 5 being, *whether the cause of action is statute barred, whether there was unfair dismissal, whether Claimant was underpaid, whether Claimant had pending leave and appropriate remedies.*
5. It is not in dispute that the parties went through conciliation before the Labour Office and the Conciliator in a report dated 5 August 2014 recommended that the Respondent pay the Claimant Kshs 98,460/-.

Limitation

6. The Claimant pleaded and testified that he was dismissed on 2 December 2013. The Respondent admitted that the separation was indeed on that day, but asserted that the Claimant deserted work.
7. On the basis of the pleadings and testimony that the cause of action accrued on 2 December 2013 and in consideration of section 90 of the Employment Act, 2007, the Claimant should have instituted the action on or before 2 December 2016.
8. The instant proceedings were commenced on 6 December 2016, clearly outside the period prescribed by section 90 of the Employment Act, 2007.
9. Although the dispute was taken through conciliation by the Labour Office, in the view of the Court, a conciliation process does not stop time from running for limitation purposes.
10. On that ground, the Court finds that the cause(s) of action presented by the Claimant are statute barred.
11. With the conclusion, it is not necessary for the Court to examine the other questions posed.
12. The Court orders that the Memorandum of Claim filed in Court on 6 December 2016 be struck out with no order as to costs.

Delivered, dated and signed in Nairobi on this 23rd day of February 2018.

Radido Stephen

Judge

Appearances

For Claimant In person

For Respondent Ms. Alwala instructed by Githui & Co. Advocates

Court Assistant Nixon/Martin